

**Albemarle County Planning Commission  
Final Regular Meeting Minutes January 24, 2023**

The Albemarle County Planning Commission held a public hearing on Tuesday, January 24, 2023, at 6:00 p.m.

Members attending were: Fred Missel, Vice-Chair; Julian Bivins; Luis Carrazana; Karen Firehock; Lonnie Murray

Members absent: Corey Clayborne, Chair

Other officials present were: Kevin McDermott, Director of Planning; Andy Herrick, County Attorney's Office; David Benish; Kevin McCollum; Rebecca Ragdale; Alberic Karina-Plun; and Carolyn Shaffer, Clerk to the Planning Commission.

Ms. Shaffer was present electronically via Zoom call.

**Call to Order and Establish Quorum**

Ms. Shaffer called the roll.

Mr. Missel established a quorum.

**Matters Not Listed on the Agenda**

Mr. Missel said that this item was for matters not currently scheduled for a public hearing, so if there was anything that was not on the public agenda for this evening that a member of the public would wish to speak to, now would be the time.

Ms. Shaffer said that there was no one signed up remotely.

Mr. Missel said that he would move to the next item.

**Consent Agenda**

Mr. Missel asked if any Commissioner wished to pull an item from the consent agenda.

Ms. Firehock moved that the Planning Commission adopt the consent agenda, which was seconded by Mr. Carrazana. The motion passed unanimously (5-0). Mr. Clayborne was absent from the vote.

**Public Hearings**

**a. CCP202200002 Albemarle County Public Safety Operations Center Fashion Square Mall**

Mr. David Benish, Development Process Manager of the Community Development Department, stated that this item was a proposal to locate a public safety operations center at Fashion Square Mall, in a portion of the old JC Penney building. He said that the facility would provide office space and supporting storage and vehicle maintenance services to the County police and fire rescue

departments. He said that these were considered back-of-house uses, with no publicly accessible services provided at the site.

Mr. Benish said that the compliance review process was a bit different than what was typically reviewed. He said that public uses were permitted by right in all zoning districts, but if the use was not specifically identified in the comprehensive plan, this compliance with the comprehensive plan review was required per Virginia Code 15.2-2232.

Mr. Benish said that a compliance review such as this determined whether the general location, character, and extent of a facility were in substantial accord with the comprehensive plan. He said that County staff reviewed this proposal and made recommendations to the Commission, which then acted on the proposal to find it in substantial accord or not.

Mr. Benish said that the Commission's action only related to the consistency of the proposals with the location and use with the comprehensive plan and was not a recommendation on whether the facility should be constructed or not, and was not a detailed evaluation of the development concepts. He said that no action was required by the Board of Supervisors, but the Board was informed of the Commission's action and had the option to make a different finding.

Mr. Benish displayed a location map of the facility, which was Fashion Square Mall and the old JC Penny building. He then displayed an aerial map of the site, indicating the surrounding development residential development near Squire Hills and Glenwood Station. He showed two photographs of the east and south sides of the building where the facility would be installed.

Mr. Benish said that the County had entered into a ten-year lease for a portion of the building, for approximately 32,000 square feet of the total 96,000 square feet in space. He said that the existing retail space within the building was not impacted by this proposal and would remain available for lease by other businesses or entities. He said that the map on the slide displayed within the structure where the improvements would be, including the police's offices for the traffic unit, special operations/community support, K-9 unit, animal protection, mental health support, and other file, material, and motorcycle storage.

Mr. Benish said that the fire rescue uses would include offices, supply storage, and fleet maintenance. He said that general public access was not anticipated, there were no changes to the site and no major changes to the exterior of the building except for removal of a planter box and installation of a new garage bay door on the east side. He said that there would be reinstallation of one or more of the existing tire shop bays.

Mr. Benish said that related to the land use plan, the small area plan governed this area in terms of land use recommendations, and the Rio-29 Small Area Plan encouraged a mix of uses and recommended a broad variety of uses to provide flexibility to address market conditions and development opportunities. He said that the language in the plan regarding uses was on the right side of the slide.

Mr. Benish said that staff believed the uses proposed for the public safety operations center were consistent with the uses recommended and allowed in the flex place-type area, which was the area's designation in the Rio-29 Small Area Plan. He displayed on the slide the language that indicated the uses permitted, including retail, hotel, institutional, light industrial /manufacturing/storage/distribution, with specific reference to auto sales and service that said that

it may be appropriate when an applicant can demonstrate minimal impacts on surrounding uses, especially residential uses, and the public realm.

Mr. Benish said that staff believed that the vehicle service activity would have minimal impact on the residential area given the distance between the residential areas and the actual service activity, and based on the existing vegetative buffers there, and given the service activity would be entirely within the building. He said that the character and extent of the proposed activity were compatible with the site and surrounding uses.

Mr. Benish said that additionally, this project also fostered reuse of an existing vacant building and reintroduced activities into an increasingly vacant commercial center. He displayed a photograph showing the view of the vegetation along the eastern edge of the parcel. He indicated the apartments and location of Glenwood Station in that image, and he indicated them again on an aerial map.

Mr. Benish said that staff found the location, character, and extent of the proposed public use consistent with the County's comprehensive plan, specifically the Rio-29 Small Area Plan use recommendation. He said that the facility provided space needed for essential support functions for public safety agencies, and the project fostered the reuse of an existing vacant building and reintroduced activities into an increasingly vacant commercial center. He said that no unfavorable factors had been found as they related to the proposal's consistency with the comprehensive plan.

Mr. Benish said that the Rio-29 Small Area Plan focused a lot on connectivity and character improvements, but because of the conditions of a leased facility and being used within an entire building, there were no physical improvements to be measured against the recommendation in the Rio-20 plan. He said that those issues were only not addressed because there was no opportunity to address them within this proposal.

Mr. Benish said that staff recommended the Commission find the location, character, and extent of the CCP202200002, Albemarle County Public Safety Operations Center public facility and public use thereof, as proposed, to be in substantial accord with the comprehensive plan, for the reasons identified as favorable factors in the staff report.

Mr. Missel asked if there were any questions from Commissioners.

Mr. Bivins asked why this governmental function was required to go through this process.

Mr. Benish said that the state code called for specificity in the comprehensive plan to identify that location, character, and extent. He said that the Rio-29 Small Area Plan made no reference to any public facility here, and because of that, they must go through this process to ensure that the Commission agreed with staff and the agency's finding that it was not in compliance.

Mr. Herrick added that Virginia Code section 15.2-2232, as Mr. Benish indicated, specifically required that public facilities undergo this type of review if not already listed on the comprehensive plan.

Mr. Bivins said that this was a function that should take place outside of the Planning Commission's processes.

Mr. Herrick said that ideally, public facility uses would be shown on the comprehensive plan. It now was a matter of updating it to add a feature that was not anticipated upon approval of the past comprehensive plan.

Mr. Bivins asked if staff could make those revisions as soon as possible.

Mr. Murray said that in some ways, it was good for these items to come before the Commission, because there had been criticisms in the past, particularly regarding other requirements such as critical slopes and stream buffers, that localities were not following their own requirements, and by bringing this before the Commission, this showed that they were doing due diligence that would be done if a citizen came before the Commission.

Mr. Bivins said that he would agree, but that was not the task at hand. He said that the Commission was asked to determine if this specific function and location was in accordance with the comprehensive plan and small area plan. He said that those types of functions should be given a great deal of leeway. He said that they could discuss the slopes in the County and whether they were recent manmade slopes or historic in any way, but this was specific to the comprehensive plan.

Mr. Missel asked if there were any further questions. Hearing none, he opened the public hearing and asked for the applicant to present their report.

Mr. Lance Stewart, Director of the Department of Facilities and Environmental Services for Albemarle County, said that the County had known for 15 to 20 years that there were acute space needs for the police department, and it had quickly become an issue for the fire rescue department as they had to assume responsibility for the volunteer fire stations. He said that there had been past submittals for capital requests for new facilities that went unfunded, and the County spent several years looking for any kind of industrial space within the development area that was centrally located and did not have much luck until finding the JC Penney space.

Mr. Stewart said that one of the driving forces behind this was that the fire rescue department had taken on a new function, which was that in recent years the County had purchased all of the major apparatus for the volunteer stations and assumed responsibility for maintenance of those. He said that they had to go out to each County or volunteer station and do what maintenance they could, but it was often that the stations were not right for that, and members had to work outdoors, and if anyone forgot a part, they had to go back to each station.

Mr. Stewart said that they had needed this space for a while, and the police had acute storage needs as well. He said that fire rescue had outgrown their offices on the second floor of the County Office Building, and had a lot of their quarter-master functions up there, and this project helped to meet their growing space needs.

Mr. Stewart said that the proposed location was very central and easy to access compared to most locations, with a secure mezzanine area for storage behind the tire shop, and it was available for lease. He said that for long-term planning, it would be a ten-year lease, and they would have an option to renew, but their goal was to identify a permanent space to serve these functions over time, but it would be multiple millions of dollars to do so, and there were acute needs that needed to be addressed. He displayed on the slide photographs of the mezzanine storage and approximately half of the warehouse space.

Mr. Stewart said that there were some structural members that had to be avoided, and there were some electrical and mechanical rooms that could not be disturbed, so the planters must be removed from the building. He said that they had to cut into the surround of the door assemblies and rebuild to match as close as possible and add a similar architectural band around the large roll-up door that would be installed.

Mr. Missel asked if there were any questions from the Commission for the applicant. Hearing none, he asked if there were any comments from the public on this matter.

Ms. Shaffer said there were no speakers signed up online.

Mr. Missel closed the public hearing and brought the item back to the Commission for discussion.

Mr. Bivins said that perhaps some of these could be approved as part of the consent agenda, and if there was an issue, the item could be pulled. He asked Mr. Herrick if that was possible.

Mr. Benish said that staff had discussed listing this item on the consent agenda, but he wanted to consult with the Commission first. He said that in the past, these types of items had been approved through the consent agenda depending on the complexity of the item, and the Planning Commission could pull them if they felt they needed further discussion and be rescheduled. He said that because it had not been a precedent in recent years, they were hesitant to do that without discussing it with the Planning Commission.

Mr. Herrick said that it was a possibility so long as the Board of Supervisors did not direct that the Planning Commission hold a public hearing. Looking at the statute, it said that the Commission may, and at the direction of the governing body, shall hold a public hearing. He said that unless the Board directed the Commission to hold a public hearing, it was in the "may" status.

Mr. Benish said that there would be different scales of activity for different items.

Ms. Firehock said that it would depend upon the application, but the Commission could pull it and make that determination.

Mr. Herrick recommended that Mr. Bivins look to the end of the staff report, which had a recommendation.

Mr. Benish said that it was drafted as a motion.

Mr. Bivins moved the Planning Commission to find the location, character, and extent of the CP202200002 Albemarle County Public Safety Operations Center public facility and public use thereof as proposed, to be in substantial accord with the comprehensive plan for the reasons identified as favorable factors in this staff report. Ms. Firehock seconded the motion, which passed unanimously (5-0). Mr. Clayborne was absent from the vote.

#### **b. SP202200027, SE202200056, & SE202200057 Wakefield Kennel**

Mr. Kevin McCollum, Senior Planner in the Planning Division of Albemarle County Community Development, said that he would be giving the staff presentation for SP202200027, Wakefield Kennel, a special use permit for a commercial kennel. He said that the subject property was

located at 790 Wakefield Farm, Earlysville, Virginia, just west of the Charlottesville-Albemarle Regional Airport. He said that the parcel was 4.63 acres and was zoned rural areas.

Mr. McCollum said that the existing conditions included an existing commercial kennel that had been in operation since the 1950s. He said that it had obtained a special use permit in July 1976 and was expanded at that time. He said that the facility had operated until the present day without any additional significant changes. He said that it was an 8,000-square-foot building and associated parking, along with 10,500 square feet of outdoor runs for the animals. He said that a majority of the surrounding properties were low-density residential, ranging from .5 acres to 2 acres in size. He said that there were also nearby rural area uses including a large farm to the east along Wakefield Farm.

Mr. McCollum said that the applicant had requested a special use permit to build a new and expanded facility adjacent to the existing kennel. He said that the existing facility would remain operational until the new kennel was completed. He said that the new kennel was larger, with 11,650 square feet, and 100 kennels, with a resulting slightly smaller outdoor area, 6,240 square feet, for the runs.

Mr. McCollum displayed on the screen the conceptual plan that provided an overview of what the facility would look like once construction was completed, and in addition to the special use permit request, the applicant had requested two special exceptions, one to reduce the 500-foot setback to any agricultural or residential lot line, and a second to reduce the required number of parking spaces.

Mr. McCollum said that for the setback special exception, on page 4, section 5.1.11(b) should be corrected to section 5.1.11(a), as shown on the screen. He said that for the parking special exception, on page 5, there were 12 existing parking spaces adjacent to the existing facility, and not 9, which was the number originally required from the 1976 special use permit. He said that staff evaluated these special exceptions based on what was submitted with the applicant's narratives, which cited the appropriate zoning ordinance sections and number of existing parking spaces; however, there was a slight error in the staff report.

Mr. McCollum said that the special use permit application was reviewed under the factors for consideration as outlined in the zoning ordinance. He said that staff believed the proposed new facility would not be detrimental to the adjacent parcels, would not change the character of the nearby area, would continue to be in harmony with the rural areas zoning district, and was consistent with the comprehensive plan. He concluded that staff recommended approval of SP202200027 with the conditions as recommended in the staff report.

Mr. Missel asked if there were any questions from Commissioners.

Ms. Firehock said that she was surprised at the disparity between the required parking and the requested parking reduction. She asked if the required parking was calculated by the square footage of the building.

Mr. McCollum said that the number of parking spaces for kennels was one space per 400 square feet, so with a kennel of that size, a large number of parking spaces was required.

Ms. Firehock said that perhaps that issue could be revisited when they performed the zoning ordinance update. She said a similar situation had arisen with a different kennel in another

jurisdiction, in which that amount of parking was not needed because people were not parking for long amounts of time. She said that she enjoyed the image from the applicant of what people expected to see in a kennel and was curious to see if that were simply an example or if that were what would be provided for their customers.

Mr. Carrazana asked for clarification about the fate of the existing facility.

Mr. McCollum said that it would be completely removed, and the intent of the applicant was to keep the kennel open as they constructed the new facility, and then would take out the old structure.

Mr. Carrazana asked what the approximate distance was from the building to the property line.

Mr. McCollum asked if Mr. Carrazana was referring to the existing building.

Mr. Carrazana said yes.

Mr. McCollum said that he did not know.

Mr. Carrazana said that he did not see it on the application.

Mr. McCollum said that he could supply that information to Mr. Carrazana.

Mr. Missel asked if the surface of the parking was intended to be asphalt.

Mr. McCollum said that he was not sure.

Mr. Missel opened the public hearing and asked to hear the applicant's presentation.

Ms. Kendra Moon stated that she was a civil engineer with Line + Grade and was representing Wakefield Kennel. She said that this kennel was an existing commercial kennel in northern Albemarle, and the applicant was requesting an amendment to an existing special use permit that had allowed expansion of the current kennel.

Ms. Moon said that the applicant was requesting to replace the building and demolish it on-site, both because of the age of the existing facility and because of an increase in demand for larger pet suites. She said that there would be some larger pet suites and some smaller, more traditional kennels, so that there was more of a variety for customers and would help meet the business's customer needs. She said that the property was located in the rural areas and surrounded by residential uses.

Ms. Moon said that the building was built in the mid-1950s, and the general layout of the site was the existing parking adjacent to the building with a fenced-in area surrounding it, and a large turf field next to the building. She said that roughly half of the site was wooded. She said that the dogs were currently able to enter and exit the building freely between the hours of approximately 6:30 a.m. and 6:00 p.m. when staff was present, and the indoor kennels were connected to the outdoor areas, with an open door to be able to enter and exit freely. She said that there were up to six employees at any given time and 12 parking spaces.

Ms. Moon said that the project would be phased so that the existing building could remain while they were building the new site. She said that was largely because as a small family business, they could not afford to close while the new building was under construction.

Ma. Moon continued that proposed conditions included an asphalt parking lot to be placed roughly in the same location as the existing building, a sound-dampening fence surrounding the facility, and indoor suites with more space for the dogs. She indicated the image of the pet suite on the slide, stating that it was from Pet Paradise but was a similar model to what would be installed.

Ms. Moon said that the image above was of the sound-dampening fence material, which did not have to have foliage as shown, but could be a simple black fence if preferred. She said that in the lower left corner of the slide was an image of the Morton building, and was very similar to what the new building would look like. She said that there would be the same hours of operation, the same number of employees, an increase in parking spaces, along with a slightly different approach with the dogs' playtime so that there would be designated times for limited groups of dogs to go outside during the day.

Ms. Moon summarized that the proposed improvements were 100 kennels, 11,650 square feet of building space, 6,240 square feet of outdoor runs, sound-dampening fence, and double-insulated building, 20 parking spaces, and an estimated maximum of 212 trips per day. She said that the closest property line would be 17 feet closer, and the nearest residence would be 32 feet closer. She said that the use was largely supporting the local community by adding an amenity, and there was positive feedback in the community meeting.

Ms. Moon said that the most feedback they received was that neighbors would be disappointed that they could no longer see the dogs with the sound-dampening fence. She said that the kennel had been in use for almost 70 years, so the neighbors who had moved to the neighborhood since that time were aware of the kennel's existence near their properties. She said that they were also sensitive to tree preservation with this proposal, and the building would be placed within the area of existing turf, so there would be a very limited number of trees removed.

Ms. Moon said that the existing kennel was in place before the adoption of the ordinance, so the existing kennel did not meet the setback requirement, and the proposed kennel would not either. She said that there was a 500-foot setback from the building to any adjacent agricultural or residential property, and because this was surrounded by residential property, the parcel would have to be 29 acres to meet the 500-foot setback in all directions, but currently existed as a 4.63-acre parcel. She said that on the slide, the blue box surrounding the parcel map represented the size the parcel would have to be to meet that setback.

Ms. Moon said that the zoning ordinance requirements for parking included the outdoor area for the pets because the dogs occupied that area, so that area must be included in the calculation made for parking, which resulted in the number of 51 parking spaces. She said that the existing use itself would require 52 parking spaces, but they only had 12 and did not need 40 additional spaces, so an additional eight were being requested instead to help with peak drop-off times.

Mr. Bivins said that on the plan was a retention pond.

Ms. Moon confirmed this.

Mr. Bivins said that it would be a swimming area. He asked how it would be a swim area when it was dry during the summer.

Ms. Moon said that it was a dried detention pond that only filled when it rained. She said that it would be dry most of the time.

Mr. Bivins asked if it was an amenity.

Ms. Moon said that it was not an amenity. She said that "SWM" referred to stormwater management.

Mr. Bivins said that he thought it was for pets to swim in.

Ms. Moon said that it was not.

Mr. Missel said that Ms. Moon had mentioned there were six employees and three employee parking spaces. He asked if there were additional employee parking spaces needed with the growth of the business.

Ms. Moon said that those three parking spaces were not meant to signify that those were the only parking spaces for employees. She said it was an existing area used as informal parking by employees, so the three employee parking spaces were meant to formalize its use.

Mr. Missel asked if there were any comments from the public.

Ms. Shaffer said there were no speakers signed up online.

Mr. Missel closed the public hearing and brought the matter before the Commission for discussion.

Mr. Murray said that he had attended the community meeting that was held, and it seemed that the applicant had been a great neighbor, and many neighbors came out in support of the project. He said that he was also going to mention that the neighbors expressed disappointment in the proposed fence that would separate them from viewing the dogs. He said that he was overall in support of this item.

Ms. Firehock said that the soundproofing of the building, the sound-dampening fence, and the attempts to control how many dogs were outside were impressive. She said that this improved the site over present conditions, and she supported it. She said it was also a good point that they had been good neighbors.

Mr. Carrazana said that he appreciated the level of thoroughness in the information presented for this small family business. He said that the plan indicated a stormwater management plan, which helped to mitigate the addition of the impervious surface.

Mr. Bivins said that he supported this project. He said that this company had a glowing reputation as a kennel in the community, so upgrading the facilities would be well-received. He asked if staff could recommend information about the sound-dampening fence to the applicant for the Misty Mountain Campground. He reiterated his support of the current item.

Mr. Missel said that he also was in support and commended the applicant on a great job.

Mr. Murray moved to recommend approval of SP202200027 Wakefield Kennel with the conditions as outlined in the staff report. Ms. Firehock seconded the motion, which carried unanimously (5-0). Mr. Clayborne was absent from the vote.

### **c. SP202200028 Gobblers Ridge Development Right**

Ms. Rebecca Ragsdale said that she was with the Albemarle County Planning Division. She stated that the property was 4.82 acres in size, located along Route 53 or the Thomas Jefferson Parkway. She said that it included two existing parcels, one at the corner of 53, and Gobblers Ridge went across the existing parcel and back to serve the other lots. She displayed on the screen an aerial map that showed the two existing dwellings on the west and east sides of the existing Gobblers Ridge.

Ms. Ragsdale displayed an existing physical survey of the parcel. She said that the subdivision history was outlined in the staff report that led them to this point, which included an error in the number of development rights assigned to this parcel. She said that although there were two existing dwellings on this 4.82-acre parcel, the development rights note that said that it had two development rights, which was a figure relied on by the current property owner, was incorrect.

Ms. Ragsdale said that there was some subdivision history that included the parent parcel 36 that led to the current configuration of 36-E. She said that this special use permit request would grant the additional development right for the existing dwellings so that there was potential to subdivide in the future, and without the development right, the County could not create further nonconforming situations.

Ms. Ragsdale said that the special use permit was analyzed against the typical criteria, but it was something not seen often in terms of the existing conditions. She said that they did not see any impacts or detriment needed to address with recommended additions of approval, and if they chose to subdivide in the future, then the regulations in the subdivision ordinance would be applicable. She said that the character would not change, and it would correct the prior error. She said that they typically did not support additional development rights in the rural areas, but this was a unique circumstance, so staff recommended approval of this item without any necessary conditions.

Mr. Murray said that he assumed the mistakes that were made would not happen again today.

Ms. Ragsdale said that yes, there were additional measures in place, and they were careful in development notes and parcel research before approving plats.

Ms. Firehock clarified that the County made a mistake and represented that mistake to the landowner, who made various decisions based on that mistake, so they were trying to rectify that mistake, so it was not a nonconforming situation.

Ms. Ragsdale stated that licensed land surveyors prepared the plats, so there was responsibility there, and the County approved the plat with the note containing the incorrect development plats, which was how the lot of record had that note on it today.

Mr. Bivins asked to see the map of the plat. He said that he had difficulty understanding exactly what was being done to what piece of property.

Ms. Ragsdale said that the existing conditions survey of the plat did not include a proposed lot configuration, yet they had not submitted the proposed plat.

Mr. Bivins asked if staff would expect that at a future time, there would be another home there.

Ms. Ragsdale said that there would not be any additional dwellings.

Mr. Bivins asked if the area located at the bottom of the slide would be its own plat.

Ms. Ragsdale indicated on the slide the two existing dwellings and said that the lots would be configured to meet the minimum of two-acre lots, and the drain field and well would have to be located on the same parcel as the dwelling. She said that with Gobblers Ridge would potentially bisect some of those properties.

Mr. Bivins clarified that the correction requested this evening was not enabling a new dwelling to be built and were not dealing with the adjacent properties.

Ms. Ragsdale said that was correct. She said that the bolded line on the slide outlined the current configuration, which was shaped in a way that went down toward the other parcel, 36-E1.

Mr. Bivins asked if Gobblers Ridge would become a boundary line for the second property.

Ms. Ragsdale said not necessarily.

Mr. Bivins asked if that was because it had not been developed yet.

Ms. Ragsdale said that there was nothing preventing an access easement from bisecting a property as it did now, but there was a way to configure it and comply with the subdivision ordinance where a portion would not still cross a lot because of where the drain fields were located.

Mr. Bivins said that they were not seeing any mention of what they proposed for a subdivision right now.

Ms. Ragsdale said that they were seeing the existing conditions. She said that the word "proposal" may create confusion.

Mr. Bivins said that he had been trying to understand what the proposal itself was.

Ms. Ragsdale clarified that the proposal was to grant the additional development right needed to work toward compliance.

Mr. Bivins asked if the map was of what the parcel looked like today.

Ms. Ragsdale said yes.

Mr. Bivins asked if this information came before the proposal.

Ms. Ragsdale said yes.

Mr. Carrazana said that it was a proposal for a subdivision right, but they did not have the actual subdivision.

Mr. Bivins confirmed this.

Mr. Clayton Poffenberger said that he resided at 4484 Watts Passage, Charlottesville, Virginia. He said that the proposal was to try to regain the additional development right that was thought to be on the plat upon purchase. He said that there were two separate dwellings on two separate parcels until 1991. He said that they did the due diligence, and the plat in 2003 that two development rights remained, and they went forward with that information. He said that when they purchased the property, the dwellings existed there and nothing much had changed.

Mr. Poffenberger said that in regard to some of the Commissioners' questions, they did not necessarily include the proposed vision but were trying to regain the development right in order to have the future opportunity to propose a subdivision if they chose to do so. He said that there would be no additional dwellings allowed per the County's rule because there should be two development rights for the two houses. He said that they were trying to bring the paperwork up to what it was. He said that he could give the Commission more information to better understand this issue.

Mr. Missel asked if there were any questions from Commissioners. Hearing none, he asked if there were any comments from the public.

Ms. Shaffer said that there was no one signed up online to speak.

Mr. Missel closed the public hearing and brought the item before the Commission for discussion.

Mr. Missel moved to recommend approval of SP202200028 to grant one additional development right for the reasons stated in the staff report. Ms. Firehock seconded the motion.

Mr. Bivins said that it was interesting to see the Thomas Jefferson Parkway continued on the other side of the house. He said that it probably helped when selling the house to say it was located so nearby.

The motion passed unanimously (5-0). Mr. Clayborne was absent from the vote.

#### **d. SP202200030 Spring Hill Farm Development Rights Request**

Ms. Ragsdale said that this item was a property of 442.42 acres in size and went back to some 1981 special use permits. She said that it was a large parcel with frontage on Dick Woods Road, Grassmere Road, and Ivy Depot to name a few. She said that there were a fair amount of public notice signs posted, and all of the abutting owners were notified. She said that there were no objections to this item. She said that the access would be from Dick Woods Road, where there was an existing entrance.

Ms. Ragsdale said that the parcel had some significant resources, mentioned in terms of Ivy Creek and the floodplain along Dick Woods Road, and some streams along the parcel in this

area. She said that the streams naturally segmented the portion of the property from the remainder of it. She said that the original subdivision was approved in 1981, under a provision in the ordinance that allowed the development rights to be utilized to create a minimum of 2-acre lots, as well as utilizing the development rights of the 21-acre lots, so that smaller lots than 21 acres could be created. She said that when this was originally approved, they utilized all but seven of the rights that they had, so to utilize any of the additional development potential, a special use permit amendment was necessary.

Ms. Ragsdale said that there was a history of an approximately 100-acre parcel to be accessed off of Dick Woods Road, which was the same area discussed with the current proposal. She said that the prior proposal also included a stream crossing and filling in the floodplain, which was not necessary in this case. She said that the lots created were primarily in an area where the former village of Ivy was designated. She said that this was a unique circumstance where residue was left for conservation and agricultural uses.

Ms. Ragsdale said that the proposal included an approximately 28-acre lot and a 64.52-acre lot. She said that over the course of the review, the applicant had corrected the acreage, but some elements of the proposal included access for the two lots from the existing entrance off of Dick Woods Road, which was established from prior logging activity, and Lot 1 for one residence and Lot 2 for the second residence.

Ms. Ragsdale said that there were conservation areas identified, and a commitment to preserve the stream buffer areas, so the applicant was approaching this from a conservation standpoint and was agreeable to additional conditions consistent with some of those in the history of the parcel that limited clearing and additional water protection provisions because it had critical resources and was located in a water supply protection area.

Ms. Ragsdale said that the residential lot layout was consistent with what was seen in the area of Ivy and Dick Woods Road, so staff did not find any potential detriment to any abutting parcels, or the character changing with regard to the residential pattern. She said that staff had proposed conditions that retained the agricultural and conservation values of the property, and those conditions and features of the proposal with the elements of the plan provided consistency with the comprehensive plan.

Ms. Ragsdale said that the conditions in the staff report intended to get at those goals. She said that since the staff report the Commission received, the staff had updated the conditions of approval so that they were more enforceable and aligned with the current ordinance and condition language. She said that some changes were based on feedback from the applicant. She said that those changes were described on a printed sheet of those conditions, and some of those changes were simple clarifications.

Ms. Ragsdale said that the first condition stated that further division of the residue of Parcel 58-95 shall require amendment of this special use permit, and the second condition stated that no further division of proposed Lot 1 and/or proposed Lot 2 was permitted. She said that the third condition was that the development of the parcel must be in general accord with the proposed lot layout, and identified the conservation areas and access to the lots. She said that condition four limited the number of dwelling units on the proposed lot to one dwelling each.

Ms. Ragsdale said that the primary change was made to Condition 5. She said that there was a prior notion that the condition's requirement was that the applicant would obtain a riparian

easement, but staff felt it would be better to have the enforceable standards as a special use permit condition instead of relying on a future easement, easement holder and language not before the Commission this evening.

Ms. Ragsdale said that this was a special use permit condition that would be added to the plat and still be part of the regulations of the property and enforceable by the zoning ordinance, which was seen as a more appropriate approach. She said that it addressed the designation and management of the stream buffers, a tree planting plan to include replanting in areas that had been disturbed for the existing access road, and a best management practices plan that addressed the agricultural activities and regulations regarding livestock, nutrient management plans, as well as the planting of native plants in the riparian buffers.

Ms. Ragsdale said that staff had reviewed this with the County engineer, and the applicant and staff were comfortable with these conditions so long as input was received from the Planning Commission this evening before it was finalized for the Board. She said that Condition 6 was amended to clarify that the clearing of land for residential development may not exceed two acres per parcel, and did not include any of the agricultural or forestal activities or farm buildings associated with the property.

Ms. Ragsdale said that staff recommended approval with the updated conditions, and as she mentioned, there was a continuation of preservation of the sensitive areas on the site. She said a negative aspect of the proposal was that additional residential development was not consistent with the goals of the comprehensive plan. She said that the updated conditions had addressed the previous concerns regarding the unclarified conservation areas and preservation regulations on the parcel.

Mr. Murray asked if the forestry road had not been there, staff would have recommended the road be in that place.

Ms. Ragsdale asked Mr. Murray to repeat himself.

Mr. Murray asked if staff would have recommended that the road to access the parcel be located in the place where the current forestry road existed.

Ms. Ragsdale said that staff found the location to be favorable because there were no impacts to the floodplain, which was an improvement from prior plans, and engineering had reviewed it with no concerns raised. She said that it was adequate for two lots, so it was probably the best spot given the characteristics of the property unless there was a spot where the stream impacts could have been avoided, but the impacts were already on the property.

Mr. Murray said that there was a large difference between short-term impacts and long-term impacts, and the long-term impacts of having a stream erode through a stream buffer were worse than the short-term impacts of creating a new road. He said that for future policy, he would recommend not grandfathering in logging roads and farm roads.

Ms. Firehock said that she had researched the impacts of logging roads and driving heavy trucks over a road for many years would create a permanent impression, so it was not a temporary impact, but the road had already impacted the landscape and would continue to be noticeable for decades, even if no more heavy trucks traveled that road. She said that she disagreed that it was

a temporary or unimpacted area. She said that she liked the conditions that staff developed and were the type of things she would have recommended.

Mr. Bivins asked to see the map of the proposed plat. He asked Ms. Ragsdale to indicate the boundary line between 58-95 and the two lots. He asked if that was the forestry road.

Ms. Ragsdale indicated the existing access road that would serve Lot 1, and the driveway would continue up to serve Lot 2. She indicated the parcel boundary line between the two and the northern boundary.

Mr. Bivins asked if the 58-95 area was at the bottom of the map.

Ms. Ragsdale said that the conservation area would be part of Lot 1. She said that that was a change made since the initial submittal, and while the area was no longer part of the residue, it would have those protections in place with the special use permit conditions.

Mr. Bivins said that it stated that there could only be two acres cleared for each Lot 1 and Lot 2. He said that in Condition 6, the land was allowed to be cleared in the 58-95 if the use was agricultural or forestry use. He stated that it would be possible to clear additional acreage in that land under Condition 6, when clearing was prohibited in the larger lot, so there appeared to be an inconsistency to him. He said that it appeared that if something could be characterized as forestry or agricultural, it could be cleared in the 58-95 area.

Mr. Herrick clarified that Condition 6 applied to the entire subdivision, including lots one, two, and the existing 58-95.

Mr. Bivins said that if the two lots were carved out of 58-95, and in lots one and two, they were only allowed to clear two acres, at the bottom of all of that, those lots had area 58-95 included in their parcel.

Mr. Herrick said that the same rule applied to all three parcels.

Mr. Bivins said that he understood that. He said that while there was a prohibition for clearing in lots one and two, there was permissible clearing at the bottom section. He said that he did not know what was gained by prohibiting two acres when someone could clear land below.

Mr. Herrick said that there was a distinction between clearing for residential purposes and clearing for agricultural and forestry uses.

Mr. Bivins said that under agricultural and forestry uses, the trees could be cleared to create a view.

Mr. Herrick said that there was a permissive allowance for converting forest land to agricultural land.

Ms. Firehock said that she shared Mr. Bivins' concern. She said that Condition 6, line 2, said that the condition did not apply to agricultural, or forestry uses. She said that they could clear as much as they wanted under agriculture, and their stream buffer ordinance did not actually prohibit clearing in the buffer for agriculture.

Mr. Murray said that typically, fencing for livestock was only about 35 feet. He said that it should be spelled out what the buffer should be if livestock were to be fenced out, and there should be a condition with a width associated with that. He said that for row crops, there was no buffer in the County, so those could be put all the way through.

Ms. Ragsdale said that the impacts seen were from residential development, so they wanted to put a limit on how much of the parcel was developed for residential development, and Condition 5 went beyond the ordinance to cover additional impacts to streams. She said that they wanted to make sure it was not a circumstance where the standards did not apply.

Ms. Ragsdale said that there might be a case where there was disturbance where the stream buffer ordinance would not apply, so there were additional measures in place for the property. She said that they did not want to further restrict the agricultural or forestal activities, and the language in Condition 6 was to clarify that farm buildings would not be subject to the two-acre limit.

Ms. Firehock said that staff had done as much as possible within the existing law, and they were not rewriting state code on land clearing and agriculture and forestry.

Mr. Bivins said that he wanted to show that clearing could be performed in this area for those two activities.

Mr. Carrazana said that they were only restricting residential use, and the rest fell under agricultural language.

Mr. Bivins said that it could be clearer. He said that on page 4 of the applicant's report, it stated that the revised plan set aside 14.9 acres of the southern portion of Spring Hill Farm for a permanent conservation easement. He said that he did not understand how that was related to this project or if that was provided for informational purposes only.

Ms. Ragsdale said that there were areas for which the applicant used the terminology "conservation area" and through this process back and forth, they were trying to define what the intention was and how they would administer that with the special use permit. She said that those were areas where there would be no residential uses.

Mr. Bivins said that that issue was not going to be settled tonight, because none of the conditions talked about the conservation of the preexisting farm. He said that he was attempting to clear up what was to be approved.

Ms. Ragsdale said that the conservation easement areas were an element of the proposed lot layout and there would be no residential activity in those areas. She said that they would remain for agricultural and forestal uses, and also would be subject to the additional stream buffer and best management practices conditions.

Mr. Murray asked how that differed from a normal subdivision. He said that it appeared it was already true. He said that in the water protection ordinance, the residential element would not be within the 100-foot buffer, but they should be required to maintain that 100-foot buffer. He said that they did not seem to be getting more than it was already under the water protection ordinance to begin with, except for the part about requiring fencing livestock out of streams and some required BMPs.

Mr. Herrick said that Conservation Area B was actually wider than the stream buffer, and that area went from the full extent of the southern boundary to the road, which was a greater area than the stream buffer.

Mr. Missel asked if there were any further questions from the Commission for staff. Hearing none, he opened the public hearing.

Mr. Ethan Miller said that he was a resident of 2247 Garth Road, Charlottesville, Virginia. He said that he was before the Commission tonight in support of the amendments governing this special use permits for the Spring Hill Farm property in Ivy, which was owned by his and his wife's company, Blue Springs Land Corporation.

Mr. Miller said that originally, this Spring Hill Farm property was 695 acres, owned by his wife's grandmother, Nettie Marie Jones, who was a longtime resident of Albemarle County. He said that in 1981, to develop this property, Mrs. Jones applied for two special use permits, SP81-1 and SP81-55. He said that that divided the 695-acre property into a total of 33 lots, containing approximately 153 acres plus 10 acres of roads, and a residue parcel of approximately 531 acres, for a total of 34 parcels.

Mr. Miller said that under the zoning ordinance as existed then and as existed now, the number of rights that the property could have been divided by right, and that number could have been either 41 or 42 but was irrelevant as there were 34 parcels, and if this proposal was approved tonight, there would be 36. He said that in any case, it was less than the 41 that could have been developed by right under the ordinance then and the ordinance now. He said that as Ms. Ragsdale had pointed out, there was a lot of discussion about why the special use permit process was used in 1981. He said that some of the property was zoned village residential at that time.

Mr. Miller said that the key was that the use of the special use permit process was due to the size of the parcel and not the number, and the effect of the permit was to cluster the lots, which was deemed to be a good way to develop the property. He said that if the 33 lots had been developed strictly by right, they would have consumed 503 acres of the property rather than the approximate 180 acres.

Mr. Miller said that he and his wife acquired the property after Mrs. Jones died in 1991, and had owned it since then. He said that in the 42 years since the approval of the two special use permits, while there were a few done about 20 years ago in an attempt to divide one of the lots, there had been no divisions in the 42 years that those permits would be approved.

Mr. Miller indicated the locations of the original 33 lots and the farmhouse which still existed. He said that lots 15 and 16 were the original Spring Hill Farm, and the land was still used as a farm. He said that the area called Conservation B was entirely part of Lot 1. He said that there was an area that would be part of the residue and subject to conservation easements to protect the streams.

Mr. Miller said that the topography separated the southern part of the property from the northern section. He said that they had taken approximately 93 acres and created two lots, one was 64 acres, and the other was 28 acres. He said that there were about 14 acres that would be preserved and subject to riparian buffers.

Mr. Miller said that the County's comprehensive plan and zoning ordinance stated that the goals of the rural areas were to preserve agricultural and forestal uses and protect watersheds. He said that the proposed project achieved both of the goals. He said that only two acres of the parcels would be permitted to be cleared for residential uses. He explained that of the total 107 acres, only four acres would be converted from agricultural and forestal uses to residential use.

Mr. Miller said that there was a tremendous financial incentive for rural area parcel owners to keep agricultural and forestal uses on the parcels. He said that the Spring Hill property was located in the South Fork Rivanna watershed, and Ivy Creek ran along the eastern portion of the property. He said that due to size restrictions and the size of the lots, there was no impact on adjoining properties. He said that public watershed protection would be a public benefit.

Mr. Miller clarified that clearing was restricted for residential uses, but land clearing was possible for agricultural and forestal uses. He noted the concerns regarding the inconsistency around land clearing. He explained that forestry was the periodic cutting of forests and the sale of timber. He said that if they were to protect forestry, then they would be encouraging land clearing. He said that for agricultural uses, forests could be cleared to create a field, and fields could be converted into forests.

Mr. Bivins asked Mr. Miller to continue with his comments.

Mr. Miller said that there had been an infestation of pine beetles in the County, and a large portion of the pine forests on the property died and needed to be clearcut. He explained that commercial forestry operations were able to harvest timber from the site. He said that homeowners did not want to live next to real forestal uses or real operating farms. He said that one solution would require a change in the zoning ordinance. He said that certain parts of the County which were dedicated rural were no longer rural. He suggested that commercial farms and commercial forestry not be located near residential uses.

Mr. Miller said that he had learned commercial farms and forestal uses consisted of thousands of acres. He said that the property was planted mainly with hardwood, and the lifecycle of hardwood was 50 to 70 years. He said that if the property were treated as a commercial forest, then they would have a commercial forester come in to clear the land and replant the trees. He said that smaller parcels owned by the residents would have selective timbering, not clearcutting. He said that the impact of small parcel forestry, managed by the property owners, would be better for neighboring residences.

Mr. Bivins clarified that the timbering was at the discretion of the owner. He said that he was concerned that there was the potential for a cleared field.

Mr. Miller responded that the bottom piece would no longer be part of the residue, and it would be owned entirely by the property owner.

Mr. Bivins asked if the parcel would lose its agricultural and forestal designation when it was converted to residential uses.

Mr. Miller said that it would not.

Mr. Bivins said that if Lot 1 became a residential property, then the owner of the property could decide to clearcut the land for forestal uses, or they could convert the land. He said that the

condition limiting the clearing for residential development implied that the lot would remain wooded.

Mr. Miller said that the language should be changed because it discussed the clearing of the land and not the use of the land.

Mr. Bivins clarified that if two acres were cleared for residential use, then additional acres could still be cleared for agricultural and forestal uses.

Mr. Miller said that was correct.

Mr. Bivins asked why the condition was limited to two acres if the property owner could already use the property as they wanted.

Ms. Firehock said that if the land were cleared for agricultural or forestal uses, the implication was that the land could be regenerated. She said that the prohibition was related to clearing the land for residential use.

Mr. Bivins said that the County had liberal agricultural uses.

Ms. Firehock said that was not the applicant's fault or under the purview of the application review. She said that it had been made abundantly clear what the Commission had and did not have control over in regard to the consideration before them.

Mr. Murray noted that with forestry, when the land was cleared, the stumps were left, and trees were replanted. He said that the potential conversion to pasture was causing concerns. He suggested that they remove the possibility that the land could be converted to pasture.

Mr. Miller asked for clarification on whether such a condition would have to be proffered by the applicant. He said that the Commission may not be able to impose such a condition because the comprehensive plan was supportive of agricultural and forestal uses. He said that he was not aware of an ordinance that would restrict the conversion of agricultural uses to forestal uses or vice versa.

Mr. Missel said that was correct.

Mr. Miller said that as a practical matter, the property was fairly steep. He said that the likelihood was that the property would remain a forest. He said that it was likely the agricultural uses and the forestal uses would remain where they were.

Mr. Missel opened the hearing for public comment. He noted that there were no speakers and brought the matter back before the Commission.

Mr. Murray said that the conditions of the proposal were unusual.

Ms. Firehock stated that the applicant had proposed to protect the stream buffer in their application. She said that the conditions were actions to be taken to further protect the stream buffer.

Mr. Murray said that the item had been before the Board multiple times. He said that the Board

had indicated they wanted one bridge access.

Ms. Firehock said that a different access was proposed than what had previously been before the Board. She said that it was a better solution without a stream crossing.

Mr. Murray said that if the access was as old as indicated, then it had existed when the site had previously been reviewed by the Board.

Ms. Firehock clarified that the Board was not in a position to negotiate site design with the applicant. She said that the conditions were good. She said that they wanted to clarify what they were able and not able to control. She said she did not know how more clarity could be brought to the proposal.

Mr. Murray said that there was the issue of issuing a development right. He noted that the County did not have a development right transfer program. He said that the Commission was in the situation of granting a development right.

Ms. Firehock said that they could discuss a development right transfer program at another time, but they did not work because there were abundant development opportunities in the surrounding localities, and it was a problem of supply and demand.

Mr. Missel noted concerns regarding how the agricultural and forestal district would not be impacted by the two-acre residential development. He said that the conditions of the application clarified that they did not apply to agricultural and forestal uses.

Mr. Bivins said that the County had properties zoned one way, and there was a tension between the condition of the land and what it was zoned. He said that staff should spend time reviewing places where there was conflict. He said that he was not suggesting that the County should expand the development area. He said that there were many places in the County where they had to balance the concerns.

Mr. Missel said that infrastructure was further impacted.

Mr. Bivins said that he supported the proposal.

Ms. Firehock moved the Commission to recommend approval of SP202200030 with the conditions as revised and presented at the hearing. Mr. Carrazana seconded the motion, which carried (5-1). Mr. Murray voted against the motion and Mr. Clayborne was absent.

### **Recess**

Mr. Missel announced the Commission would take a five-minute recess and reconvene at 8:00 p.m.

### **Committee Reports**

Mr. Carrazana requested Mr. McDermott provide a report on the MPOTEC because he was unable to attend.

Mr. McDermott said that he was not present at the committee meeting. He said that he could

provide an overview of the discussion after reviewing the meeting with staff.

Mr. Murray reported that the Crozet CAC discussed the mobile home park by Crozet Park. He said that the conversation included several residents from the mobile home park, and they discussed the importance of affordable housing. He said that much of the discussion focused on how to make sure that the mobile home park remained so that residents were not displaced.

Ms. Firehock reported that the Historic Preservation Committee did not meet due to a lack of a quorum. She said that she was on a business trip in South Carolina, so she missed her CAC meeting. She noted that Mr. Missel had attended the CAC meeting.

Mr. Missel said that he attended the 5th and Avon CAC meeting. He said that there was no quorum, so officer elections were not held, and the minutes were not approved. He said that the CAC did have an hour-and-a-half-long discussion. He said that information was provided regarding SMART Scale.

#### **Review of the Board of Supervisors Meeting: January 18, 2023**

Mr. McDermott said that he was not present at the meeting, but he had been briefed. He reported that there was a presentation from the consultant and the director of CAT related to the new micro-transit program. He said that they had received a demonstration grant from the state to begin the program in two areas—Pantops and the Places29 North area. He said that the County was seeking to draft a request for proposals for a company to operate the micro-transit program. He explained that micro-transit was similar to Uber or Lyft, but it was operated as public transit.

Mr. McDermott reported that the Board heard the St. Paul's Ivy Church Preschool project and granted approval. He said that the Board reviewed the Keswick School special use permit, and they approved the request unanimously. He said that Ms. Ragsdale had been present at the meeting. He said that the Hollymead Substation Expansion special use permit was unanimously approved by the Board.

Ms. Firehock asked whether the County was requesting the General Assembly to allow the County's subcommittees to meet remotely.

Mr. Herrick clarified that one of the County's legislative priorities was to allow local bodies to meet all-virtually. He explained that there were five local bodies singled out in state legislation that were prohibited from meeting all-virtually. He said that the County's legislative priorities included a request to remove the prohibition on those five local bodies from meeting entirely virtually.

Ms. Firehock said that the Historic Preservation Committee was stuck because they could not get a quorum, and members were not able to attend the meeting. She said that they were unable to change the number of times they met because an in-person vote was required.

Mr. Herrick responded that the Historic Preservation Committee was one of the committees allowed to meet all-virtually. He said that the issue was that the committee needed to meet in person to adopt an all-virtual meeting policy. He said that the committee had to meet in person one more time to adopt the virtual meeting policy, and from that point forward, they could hold sporadic all-virtual meetings.

Mr. McDermott said that they were working to address the issue with the Chair of the committee,

the supervisors, and County Executive.

Ms. Firehock said that there had been several resignations. She clarified that the resignations impacted the quorum.

Mr. Herrick said that was correct.

Ms. Firehock said that the committee had not met in nearly six months, and there were important conversations related to the comprehensive plan that they should be having.

Mr. Carrazana said that there was a bill in the General Assembly to address the issue. He noted that there were no substantial differences from the current policy.

### **New Business**

There was none.

### **Old Business**

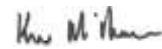
There was none.

### **Items for Follow-up**

There were no items for follow-up.

### **Adjournment**

At 8:15 p.m., the Commission adjourned to February 14, 2023, Albemarle County Planning Commission meeting, 6:00 p.m. in Lane Auditorium.



---

Kevin McDermott, Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards; transcribed by Golden Transcription Services)

Approved by Planning Commission
Date: 02/14/2023
Initials: CSS